

PT 01-42

Tax Type: Property Tax

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

SACRAMENTO
ELDERLY HOUSING
CORPORATION
AND
ASSISSI HOMES
DOWNER PLACE, INC.
APPLICANTS

v.

STATE OF ILLINOIS
DEPARTMENT OF REVENUE

Nos: 99-PT-0019
(98-16-0058)
99-PT-0041
(98-45-0165)

P.I.N.S: 13-25-321-001, *et al.*
(99-PT-0019)
15-19-256-007
(99-PT-0041)

Alan I. Marcus
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION
PURSUANT TO MOTIONS FOR SUMMARY JUDGMENT

APPEARANCES: Messrs. John Joyce and James R. Sneider of Stahl, Brashler LLC on behalf of the Sacramento Elderly Housing Corporation; Mr. David J. Chroust of Wildman, Harold, Allen & Dixon on behalf of Assissi Homes Downer Place, Inc.

SYNOPSIS: These consolidated matters arise pursuant to separate motions for summary judgment. The applicants in these matters, Sacramento Elderly Housing Corporation (hereinafter "Sacramento") and Assissi Homes Downer Place, Inc. (hereinafter "Assisi") filed their respective motions after the Illinois Department Of Revenue (hereinafter the "Department") issued two separate determinations finding that the properties for which Sacramento and Assisi sought real estate tax exemptions did not

qualify for same under Sections under Sections 15-65(a) and 15-65(c) Property Tax Code, 35 **ILCS** 200\1-1 *et seq.*¹ The underlying controversies arises as follows:

A. Case No. 99-PT-0019

Sacramento filed a Property Tax Exemption Complaint with the Cook County Board of Review (hereinafter the "Board") on September 22, 1998. Said complaint sought to exempt real estate identified by Cook County Parcel Index Numbers 13-25-321-001, 13-25-321-002, 13-25-321-011 and 13-25-321-012 from 1998 real estate taxes under Section 15-65(c) Property Tax Code, 35 **ILCS** 200\1-1 *et seq.* The Board reviewed Sacramento's complaint and recommended to the Department that the requested exemption be granted. The Department however rejected the Board's recommendation

1. Section 15-65(c) states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

by means of a determination dated March 9, 1999. Said determination found that the real estate Sacramento was seeking to exempt was not in exempt ownership and not in exempt use. Sacramento filed an appeal to this determination but later filed this motion for summary judgment. Following a careful review of that motion and its supporting document, I recommend that the Department's initial determination in Docket No. 99-PT-0019 be reversed.

B. Docket No. 99-PT-0041

Assisi filed an Application for Property Tax Exemption with the Kane County Board of Review (hereinafter the "Board") on November 23, 1998. Said complaint sought to exempt real estate identified by Kane County Parcel Index Number 15-19-256-007 from 1998 real estate taxes under Section 15-65(c) Property Tax Code, 35 ILCS 200\1-1 *et seq.* The Board reviewed Assisi's complaint and recommended to the Department that the property be exempt as of May 1, 1998. The Department however rejected the Board's recommendation by means of a determination dated July 22, 1999. Said determination found that the real estate Assisi was seeking to exempt was not in exempt ownership and not in exempt use. Assisi filed an appeal to this determination but later filed this motion for summary judgment. Following a careful review of that motion and its supporting document, I recommend that the Department's initial determination in Docket No. 99-PT-0041 be modified to reflect that real estate identified by Kane County Parcel Index Number 15-19-256-007 be exempt from real estate taxes for that 67% of the 1998 assessment year which transpired on or after May 1, 1998.

35 ILCS 200/15-65(c).

FINDINGS OF FACT:

A. Case No. 99-PT-0019

1. The Department's jurisdiction over this case and its position herein are established by the determination in this matter, issued by the Office of Local Government Services on March 9, 1999. Administrative Notice.
2. The Department's position in this case is that the subject property, which is situated on real estate identified by Cook County Parcel Index Numbers 13-25-321-001, 13-25-321-002, 13-25-321-011 and 13-25-321-012, is not in exempt ownership and not in exempt use. Administrative Notice.
3. The Application for Property Tax Exemption, received by the Department on November 10, 1998, indicates that the subject property is: (a) located at 2451 N. Sacramento, Chicago, IL; and, (b) improved with a building that was being rehabilitated for use as an elderly housing complex throughout most of 1998.
4. Sacramento is an Illinois not-for profit corporation organized for purposes of providing housing facilities and related services to the elderly and disabled. Applicant Motion Ex. Nos. 2, 3.
5. Sacramento is exempt from federal income tax, under Section 501(c)(3) of the Internal Revenue Code, pursuant to a determination letter issued by the Internal Revenue Service on October 30, 1995. Applicant Motion Ex. Nos. 5, 6.
6. Sacramento obtained ownership of the subject property by means of a warranty deed dated January 1, 1998. Applicant Motion Ex. No. 8.
7. Sacramento received all of the funding for its acquisition of the subject property pursuant to the terms of a firm commitment for capital advance financing from

- the United States Department of Housing and Urban Development (hereinafter “HUD”), which provided this financing pursuant to Section 202 of the National Housing Act of 1959, 12 U.S.C.A. § 1701 *et seq.* Applicant Motion Ex. No. 7.
8. The subject property was not suitable for use as a Section 202 housing project when applicant acquired ownership thereof. For this reason, Sacramento entered into a HUD-mandated construction contract which provided, *inter alia*, that any necessary renovations/and or improvements would be completed no later than February 21, 1999. Applicant Motion Ex. Nos. 12, 13.
 9. The subject property was under construction from January 21, 1998 through February 21, 1999. After completion of all construction, the City of Chicago (hereinafter the “City”) issued a Certificate of Occupancy for the subject property on February 25, 1999. Applicant Motion Ex. No. 13.
 10. HUD issued a verification of project completion for the subject property on February 26, 1999. Immediately thereafter, Sacramento began using the subject property as a Section 202 housing project for the very low income elderly. Applicant Motion Ex. No. 14.
 11. All of the units in this project were occupied by very low income persons with disabilities whose incomes consisted almost entirely of government subsidies, such as General Assistance or Social Security Disability Income. *Id.*
 12. These persons did pay rent to Sacramento. However, the amount of rent they paid was nominal vis-à-vis market rent and did not cover most the expenses Sacramento incurred while operating the facility. *Id.*

13. HUD provided Sacramento with funds to cover any deficits attributable to the difference between rental income receipts and actual operating expenses. *Id.*

B. Case No. 99PT41

1. The Department's jurisdiction over this case and its position herein are established by the determination in this matter, issued by the Office of Local Government Services on July 22, 1999. Administrative Notice.
2. The Department's position in this case is that the subject property, which is situated on real estate identified by Kane County Parcel Index Number 15-19-256-007, is not in exempt ownership and not in exempt use. Administrative Notice.
3. The Application for Property Tax Exemption, received by the Department on January 13, 1999 indicates that the subject property is: (a) located on the northeast corner of West Downer Place and Constitution Ave., Aurora, IL; and, (b) improved with a 5 story building that was under construction for use as an elderly housing complex throughout most of 1998. Administrative Notice.
4. Assisi's Articles of Incorporation, contained within its original submission to the Department, indicate that is an Illinois not-for profit corporation organized for purposes of providing housing facilities and related services to the elderly and disabled.
5. Assisi is exempt from federal income tax, under Section 501(c)(3) of the Internal Revenue Code, pursuant to a determination letter issued by the Internal Revenue Service on June 1, 1987. Applicant Motion Ex. No. 4.

6. Assisi obtained ownership of the subject property by means of a warranty deed dated May 1, 1998. Applicant Motion Ex. No. 5.
7. Sacramento received all of the funding for its acquisition of the subject property from HUD, which provided this financing pursuant to Section 202 of the National Housing Act of 1959, 12 U.S.C.A. §1701 *et seq.* Applicant Motion Ex. Nos. 1, 8.
8. The subject property was completely vacant and unimproved when applicant acquired ownership thereof. For this reason, Assisi entered into a HUD-mandated construction contract which provided, *inter alia*, that the anticipated completion date for construction was October 1, 1999. Applicant Motion Ex. Nos. 1.
9. The subject property was under construction from October of 1998 until the City of Aurora issued a Certificate of Occupancy and Compliance on June 22, 2000. Applicant Motion Ex. No. 2.
10. Assisi began using the subject property as a Section 202 housing project for the very low income elderly immediately after receiving the Certificate of Occupancy. Applicant Motion Ex. No. 1.
11. All of the units in this project were occupied by very low income persons with disabilities whose incomes consisted almost entirely of government subsidies, such as General Assistance or Social Security Disability Income. *Id.*
12. These persons did pay rent to Assisi. However, the amount of rent they paid was nominal vis-à-vis market rent and did not cover most the expenses Assisi incurred while operating the facility. *Id.*
13. HUD provided Assisi with funds to cover any deficits attributable to the difference between rental income receipts and actual operating expenses. *Id.*

C. I take Administrative Notice of the following legal considerations, which are pertinent to both cases:

1. The income level for a “very low income” person can not exceed “50% of median income.” Administrative Notice of OMB 2502-0204 and accompanying Directive 4350.3, implementing 24 CFR 813, 24 CFR 215, 24 CFR 236, 24 CFR 885 and 24 CFR 889 and 890.²
2. A person is considered disabled, under 42 U.S.C.A § 8013(k)(2) if they are determined, pursuant to regulations promulgated by the Secretary of HUD, “to have a physical, mental, or emotional impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his or her ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions.” Administrative Notice of 42 U.S.C.A § 8013(k)(2).
3. 42 U.S.C.A § 8013(k)(2) states, *inter alia*, that:

A very low income person shall pay as rent for a dwelling unit [of the type located within the subject property] the higher of the following amounts, rounded to the nearest dollar: (A) 30 percent of the person’s adjusted monthly income,³ (B) 10 percent of the person’s monthly income, or (C) if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person actual housing costs, is specifically designated by such agency to meet the person’s housing costs, the portion of such payments which is so designated ...[.]

Administrative Notice of 42 U.S.C.A. § 8013(d)(3).

2. These regulations do not define how “median income” is to be measured.

3. HUD and BEW adjust the resident’s income to account for things such as dependent’s allowance, allowance for handicapped assistance and medical expenses.

4. Sacramento, Assisi and HUD were prohibited from evicting any resident for failure to pay rent. Administrative Notice of OMB 2502-0204 and accompanying Directive 4350.3, implementing 24 CFR 813, 24 CFR 215, 24 CFR 236, 24 CFR 885 and 24 CFR 889 and 890.
5. 42 U.S.C.A § 8013(i)(1) provides, *inter alia*, that “an owner shall adopt written tenant selection procedures that are satisfactory to the Secretary [of HUD] as (A) consistent with the purpose of improving housing opportunities for very low income persons with disabilities; and (B) reasonably related to program eligibility and [the program] applicant’s ability to perform the obligation of the lease.” 42 U.S.C.A § 8013(i)(1).

CONCLUSIONS OF LAW:

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no contested facts in these consolidated cases. Therefore, the issues for decision herein necessarily become ones of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2nd Dist. 1987). Those issues are, precisely stated, whether: (1) the applicants, Assisi and Sacramento, qualify as the types of entities whose properties are subject to exemption under 35 ILCS 200/15-65(c) if used for appropriate purposes; and, (2) the properties Assisi and Sacramento are presently seeking to exempt (hereinafter collectively referred to as the “subject properties”) were used for purposes consistent with those set forth in 35 ILCS 200/15-65(c) during any or all parts of the 1998 assessment year.

With respect to the first inquiry, it is initially noted that the statute governing exemption of federally-financed low income projects for the elderly and disabled is found in Section 15 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq*, which states that:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

35 **ILCS** 200/15-65(c).

Section 15-65(c), like all other statutes exempting real estate from taxation, must be strictly construed. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Thus, one must exercise great caution in applying it, so as to ensure that only the very limited class of properties described therein actually receive the exempt status which the Legislature intended to confer. Otherwise,

any increases in lost revenue costs attributable to unwarranted application of the Section 15-65(c) exemption will cause damage to public treasuries and the overall tax base.

In order to prevent this, the General Assembly imposed the following pertinent statutory requirements: first, the property must be owned by an entity that qualifies for exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code; second, the property must be improved with facilities that are “qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended[;]” and third, the property must be “actually and exclusively used for charitable or beneficent purposes.” 35 ILCS 200/15-65, 15-65(c).

Both Sacramento and Assisi held the necessary exempt status throughout the tax year currently in question. However, although applicant Sacramento owned the property it is seeking to exempt during the entire 1998 assessment year, applicant Assisi did not. Therefore, any exemptions granted to Assisi herein are subject to Section 9-185 of the Property Tax Code, which states, in pertinent part, that:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 ILCS 200/9-185.

The warranty deed (Applicant Motion Ex. No. 5) proves that Assisi obtained its “right of possession” on May 1, 1998. Accordingly, Section 9-185 mandates that any exemptions granted to Assisi in this case be limited to the 67% of the 1998 assessment year which transpired on or after that date.

Based on the above, I conclude that those portions of the instant denials that were predicated on lack of exempt ownership should be: (1) modified to reflect that the property owned by applicant Assisi was in exempt ownership for 67% of the 1998 assessment year; but, (2) reversed to reflect that the property owned by applicant Sacramento was in exempt ownership throughout that entire tax year. Furthermore, for the following reasons, I conclude that the same results should attach to those portions of the denials that were based on lack of exempt use.

All of the applicants' post-acquisitional uses of the subject properties centered around the active development thereof for use as facilities of the type specified in Section 15-65(c). The working development of such inherently complex projects constitutes exempt use, as a matter of law, provided that the applicants establish that the end result will cause the property to be used exclusively or primarily for charitable purposes. Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987)

Such purposes must be ones that, by definition, benefit an indefinite number of people and persuade them to an educational or religious conviction that benefits their general welfare or somehow reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). They must also be ones undertaken by applicants that: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; and, (5) do not appear to place obstacles of any character in the way of those who need and

would avail themselves of the charitable benefits they dispense. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

The Korzen factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicants: (1) primarily serve non-exempt interests, such as those of its own dues-paying membership (*see*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)) or, (2) operate primarily in the public interest and lessen the State's burden. (*see*, DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*).

It cannot be disputed that these applicants lessen governmental burden by providing housing to disabled individuals with very low incomes. Indeed, the General Assembly specifically recognizes that supplying such housing is in the public interest by providing for exemption of facilities, such as the subject properties, that are “qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701, *et seq.*] as amended.” 35 **ILCS** 200/15-65(c).

The evidence applicants submitted in support of their respective motions for summary judgment proves that both of the subject properties are in fact duly qualified Section 202 housing projects. Furthermore, administrative notice of the regulations governing administration of such housing projects, which provide, *inter alia*, that applicants: (a) must provide housing to disabled persons even if they do not have the ability to pay rent; and, (b) can not evict any resident for failure to pay rent, establish that

such projects are not “leased or otherwise used with a view to profit” in violation of the first paragraph of Section 15-65.

Based on the foregoing, I conclude that the subject properties qualify for exemption from 1998 under Section 15-65(c) of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.*, for the periods specified above. Therefore, the Department’s initial determinations in these matters should be modified with respect to the property owned by applicant Assisi but reversed in toto as to the property owned by applicant Sacramento.

WHEREFORE, for all the above-stated reasons, I hereby recommend that:

- A. Real estate identified by Cook County Parcel Index Numbers 13-25-321-001, 13-25-321-002, 13-25-321-011 and 13-25-321-012 be exempt from real estate taxes for 100% of the 1998 assessment year under Section 15-65(c) of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.*; but, Real estate identified by Kane County Parcel Index Number 15-19-256-007 be exempt from real estate taxes for 67% of the 1998 assessment year under Sections 9-185 and 15-65(c) of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.*

Alan I. Marcus
Administrative Law Judge

July 30, 2001
Date